IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

SECOND APPEAL NO. 98 OF 2005

1. Judita Vaz and her husband

2. Benardo Furtado,
   r/o Velor, Deussua,
   H. No. 23, Chinchinim, Goa.

3. Frenny Vaz

4. Jannet Vaz, r/o Belifond,
   Deussau, H. No. 120,
   Chinchinim, Goa.

5. Mr. Peter Ferrao, and his wife

6. Master Clevo Ferrao (minor),
   r/o Deussua, Chinchinim,
   H. No. 79, Goa (Deleted as per Order
   on Roznama dated 15.1.2000)

7. Mr. Jose Filipe Ferrao,
   H. No. 79, and his wife

8. Mrs. Bella Ferrao alias
   Isabella Ferrao, H. No. 516,
   r/o Dandevaddo, Deussua,
   Chinchinim, Goa.

9. Mrs. Sebastiao Ferrao,
   bachelor, r/o Saicovaddo,
   H. No. 79, Deussua, Chinchinim, Goa.

10. Mrs. Antoonieta Ferrao,
    divorcee, major of age,
    H. No. 79, r/o Saicovaddo,
    Deussua, Chinchinim, Goa.

11.Mrs. Geraldina Ferrao
alias Zeru Ferrao,
and her husband, H. No. 6.

12.Mr. Gaudencio Gomes,
r/o Sirvodem ward,
Navelim, H. No. 6, Salcete, Goa.

13.Smt. Jesuina Fernandes,
w/o Shri Vida Manuel Ferrao,
major of age, both r/o Deussua,
H. No. 79, Chinchinim, Goa. .... Appellants

Versus

1. Mrs. Rufina Furtado,
wife of Esperanca Lucio Antonio
Jose Manuel Esperdiao Furtado
alias Jose Antonio Furtado,
s/o Joseph Anthony Furtado,
major of age, housewife and landlady

2. Mrs. Rosario Estephania
Piedade Gomes Furtado,
w/o Antonio Libano Serafino Furtado,
major of age, housewife and landlady,
both r/o Deussua, Chinchinim,
Salcete, Goa.

3. Esperanca Lucio Antonio Jose
Manuel Esperdiao Furtado
alias Jose Antonio Furtado
or Joseph Anthony Furtado

4. Antonio Libano Serafino Furtado .... Respondents

Shri Nitin Sardessai, Advocate for Appellants.

Shri D. Pangam, Advocate for Respondent No.1.

CORAM : **P. V. KAKADE, J.**

DATE : **26th September, 2006**

ORAL ORDER

Heard learned Counsel for both the parties. Perused the record.

2. This is an appeal preferred by the appellants against the judgment and order passed by the District Judge, South Goa, Margao, dismissing the appeal and confirming the judgment and order passed by the trial Court, partly decreeing the suit with declaration that the plaintiffs jointly with their respective husbands were owners in possession of the property surveyed under nos. 21/34 and 22/5 of Village Deussua. Perpetual injunction was also granted as a consequential relief.

3. The plaintiffs came with the case that they were jointly alongwith their husbands, the owners in possession of the landed properties

situated at Deussua, Chinchinim, Salcete, Goa named “Fatarcali” or “Maramtembi” or “Saiko vaddo”, which is surveyed under no. 21/34 and 22/5 of Village Deussua. The plaintiffs also averred that the suit property was inherited by the plaintiff's husband from their ancestors and though at present the said properties were separated by one another by Village Panchayat road, the said two properties were consisting in a single unit which is one half the Northern half of the property, registered at the Land Registration Office, at Margao, under no. 23623 of new series. It was submitted that in the year 1979 defendants suddenly cut down their live coconut tree which is situated at the North-West corner and continued the similar illegal acts and hence the suit for perpetual injunction came to be filed. The defendants resisted the suit, inter alia, denying the allegations submitting that the plot bearing survey no. 21/34 was wrongly averred to be belonging to the plaintiffs and further contended that the area bearing survey no. 21/34 belonged to them. The drinking water well in the land also was claimed to be in the plot of the defendant. On such and other grounds, the suit was sought to be dismissed with costs. The learned trial Judge after hearing both the parties came to the conclusion that the plaintiffs had proved that they were owners of the property surveyed under no. 21/34 and 22/5. It was also held that the plaintiffs succeeded in

proving that the defendants had encroached in the plaintiffs property admeasuring 25 to 30 sq. mts. in September, 1987 and erected an extension of the defendants house. The plea of the defendants to the effect that the suit property was a part and parcel of the defendants property, was rejected. It was also held that the defendants failed to prove that entire relevant survey no. 21/34 was erroneous in the survey records. It was further established that the defendants had failed to prove that they had become owners by adverse possession and suit came to be dismissed. Appeal was carried to the District Judge. After hearing both the parties the lower appellate Court dismissed the appeal confirming the judgment passed by the lower Court. Hence the present appeal.

4. At the outset, it must be noted that there is no substantial question of law involved in this appeal. It is to be noted that the Courts below had found that the appellants had failed to specific plead and prove adverse possession of the suit property and issue involving that aspect is said to be substantial question of law. I prefer to disagree with the preposition. The issue in respect of acquisition of title by adverse possession is definitely a question of fact and cannot be said to be the substantial question of law. Moreover, when it is apparent that there was no specific

pleading on behalf of the appellants that they had perfected title by adverse possession. The lower Courts were right in holding that the appellants had failed to plead and prove the same. This being the position, I do not see any reason why the appeal should be entertained in any manner. In the result, the appeal stands dismissed with no order as to costs.

P. V. KAKADE, J.

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